IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 19TH DECEMBER 2007 / 28TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 4566 of 2007()

C.C.NO.71/2006 DATED 16.11.2006 OF THE SPECIAL JUDICIAL FIRST CLASS MAGISTRATE(MARAD CASES) KOZHIKODE
CRL.A.NO.835 OF 2006 DATED 14.9.07 OF THE ADDL.DISTRICT AND SESSIONS COURT, FAST TRACK(AD HOC- II), KOZHIKODE.

REVN. PETITIONER: APPELLANTS/ACCUSED:

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1. P.T.DAVOOD, S/O.ABDURAHIMAN KUTTY HAJI,
   AGED 49 YEARS, MANAGING DIRECTOR,
   DAVOOD & COMPANY PVT. LTD., WEST HILL,
   CHUNGAM, KOZHIKODE.

2. NAJMA, D/O.IMBICHI MAMMAD,
   DIRECTOR, AGED 40 YEARS, DAVOOD & COMPANY PVT. LTD
   WEST HILL, CHUNGAM, KOZHIKODE.

3. DAVOOD & COMPANY PVT. LTD.,
   WEST HILL, CHUNGAM, KOZHIKODE. REPRESENTED BY
   ITS MANAGING DIRECTOR, P.T.DAVOOD,
   S/O.ABDURAHIMAN KUTTY HAJI.

BY ADV. SRI.NAVEEN.T

RESPONDENTS: RESPONDENTS/COMPLAINANT:

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1. ASHARAF, S/O.LATE ABDULLA,
   PUTHIYEDATH HOUSE, NADAYARI P.O.,
   KOYILANDY, KOZHIKODE DISTRICT.

2. STATE OF KERALA REPRESENTED BY
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 19/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR, J.

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Crl.R.P. No. 4566 of 2007

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Dated this the 19th day of December, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioners who were the accused in C.C. No.71 of 2006 on the file of the Special Judicial First Class Magistrate (Marad cases), Kozhikode challenge the conviction entered and the sentence passed against them for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioners and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioners re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the petitioners in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioners/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary

evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioners.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. Having regard to the facts and circumstances of the case, I am, however, inclined to modify the sentence in the light of the recent pronouncement by the Supreme Court that no default sentence can be imposed for an order for compensation under Section 357(3) Cr.P.C. The sentence imposed on the revision petitioners is set aside and instead they are sentenced to pay fine of Rs.2,00,000/-(Rupees three lakhs and five thousand only) which shall be deposited within **seven** months from today and on default to make the payment, they shall suffer simple imprisonment for three months. The fine amount shall be paid as compensation under Section 357(1) Cr.P.C.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

V. RAMKUMAR, JUDGE.

sj